



January 27, 2026

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN SUPPORT OF SB 27 and HB 126

I am the President of Maryland Shall Issue (“MSI”). Maryland Shall Issue is a Section 501(c)(4), all-volunteer, non-partisan organization dedicated to the preservation and advancement of gun owners’ rights in Maryland. It seeks to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public. I am also an attorney and an active member of the Bar of Maryland and of the Bar of the District of Columbia. I recently retired from the United States Department of Justice, where I practiced law for 33 years in the Courts of Appeals of the United States and in the Supreme Court of the United States. I am an expert in Maryland firearms law, federal firearms law and the law of self-defense. I am also a Maryland State Police certified handgun instructor for the Maryland Wear and Carry Permit and the Maryland Handgun Qualification License (“HQL”) and a certified NRA instructor in rifle, pistol, personal protection in the home, personal protection outside the home and in muzzle loader. I appear today as President of MSI in SUPPORT of SB 26 and its cross-file, HB 126 (“the Bill”).

The Bill And Existing Statutory Framework:

Under current Maryland law, MD Code, Public Safety, § 5-123, a licensed Maryland dealer may not transfer a regulated firearm “until after 7 days following the time a 18 firearm application is executed by the firearm applicant, in triplicate, and the original is forwarded by the prospective seller or transferor to the Secretary.” MD Code, Public Safety, § 5-124, imposes the same 7-day waiting period on sales by a “person who is not a licensee.” This Bill would create an express exception to this 7-day waiting period on both types of sales for “(1) A LAW ENFORCEMENT OFFICER; 2. AN INDIVIDUAL WHO HAS RETIRED AS A LAW ENFORCEMENT OFFICER IN GOOD STANDING FROM A LAW ENFORCEMENT AGENCY; 3. AN INDIVIDUAL TO WHOM A PERMIT TO WEAR, CARRY, OR TRANSPORT A HANDGUN HAS BEEN ISSUED UNDER TITLE 5, SUBTITLE 3 OF THIS ARTICLE.

Nothing in this Bill would repeal or interfere with the background check system conducted by the Maryland State Police for each sale of a handgun. Each such a sale requires a prospective purchaser to complete an “application,” MD Code, Public Safety, §§ 5-117, 5-118, and the application be approved by the Maryland State Police, MD Code, Public Safety, § 5-120. The State Police must conduct their own background

investigation of the applicant as required by MD Code, Public Safety, § 5-121. A background investigation through the NICS federal system for each dealer sale is separately required by federal law. See 18 U.S.C. § 922(t). The State Police is the State “point of contact” under the NICS system for all handgun sales and thus the State Police (not dealers) conduct the NICS background check for handgun sales using Federal form 4473. The State Police also conduct a separate background investigation using State databases using the information collected by the State form 77R application separately required by Section 5-117 and Section 5-118. See <https://bit.ly/3JuDn3f>. **This Bill does not amend any of these requirements.**

Maryland’s permitting system for carry permits is likewise administered by the Maryland State Police under MD Code, Public Safety, §§ 5-301-5-313. All applicants for permits are subject to extensive background checks, including fingerprinting. MD Code, Public Safety, § 5-305. Applicants are also required to undergo training consisting of 16 hours of instruction by a Maryland certified firearms instructor (including a graded live fire requirement) for initial permits and 8 hours of training (including graded live fire) for each renewal. See MD Code, Public Safety, 5-306(a)(9), (a-1). The curriculum for the training is developed and mandated by the State Police. MD Code, Public Safety, § 5-306(a-2). Certification of instructors is likewise under the control of the State Police. MD Code, Public Safety, 5-101(q). **This Bill does not amend any of these provisions.**

Discussion:

The Seven-Day Period Is Unconstitutional Under *Bruen*.

The Supreme Court held in *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 31 (2022), that there is a “general right to publicly carry arms for self-defense.” The Court observed that while States may require carry licenses, such licenses must be issued on a “shall issue” basis and may not be “put toward abusive ends.” 597 U.S. at 38 n.9. The Court thus struck down New York’s “good cause” requirement for carry permits and likewise invalidated Maryland’s then-existing “good and substantial reason” regulatory requirement originally enacted in 1972. 597 U.S. at 15 n.2. See *Matter of Rounds*, 255 Md.App. 205, 213 (2022). *Bruen* makes clear that any regulation of the right to bear arms in public must be justified by the government which must “demonstrat[e] that it [the regulation] is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 24.

The Court also made clear in *United States v. Rahimi*, 602 U.S. 680, 691-92 (2024), that any government regulation of “arms bearing conduct” must be supported by “a permissible reason.” This requirement of “a permissible reason” is currently before the Supreme Court in *Wolford v. Lopez*, No. No. 24-1046, which was orally argued on January 20, 2026.¹ A decision in *Wolford* is expected by the end of the Court’s Term

¹ The undersigned is counsel for the petitioners in *Wolford*.

in June or July. Regulation designed to discourage the exercise of Second Amendment rights is not permissible under the Second Amendment any more than it would be permissible under any other Constitutional right. See Amicus Brief of the United States in *Wolford*.²

Under these principles, Maryland's mandatory 7-day waiting period is open to constitutional attack. In *Ortega v. Grisham*, 148 F.4th 1134 (10th Circuit), *rehearing en banc denied*, 162 F.4th 156 (10th Cir. 2025), the Court of Appeals for the Tenth Circuit struck down as unconstitutional the same 7-day waiting period imposed by New Mexico for firearm purchases. The court first held that the waiting period "burdens Second Amendment rights, reasoning that "[c]ommon sense dictates that the right to bear arms requires a right to acquire arms, just as the right to free press necessarily includes the right to acquire a printing press, or the right to freely practice religion necessarily rests on a right to acquire a sacred text." 148 F.4th at 1143. The court stated that "[a]s a general matter, the government cannot delay the exercise of a right because it believes that citizens might misuse it without sufficient time to reflect beforehand." *Id.* at 1145. The Tenth Circuit held that New Mexico had failed to carry its burden to justify the waiting period under *Bruen's* test. *Id.* at 1150-51. As the court explained, "[n]othing in the record suggests that the historically understood right to keep and bear arms tolerated universal and indiscriminate burdens on purchasing or acquiring firearms with no way to enjoy the full right." *Id.* at 1155. That "full right" includes the right to acquire and possess handguns. See *District of Columbia v. Heller*, 554 U.S. 570 (2008). That Maryland applies its 7-day waiting period exclusively to regulated firearms is thus irrelevant.

The Seven Day Period Is Particularly Unnecessary for Law Enforcement Officers and Carry Permit Holders.

Elimination of the 7-day waiting period is especially appropriate for the active and retired law enforcement officers and permit holders. Under LEOSA, 18 U.S.C. §§ 926B & 926C, active duty and retired officers may carry handguns in public without a State issued carry permit. Carry permit holders may also carry handguns in public. These permit holders have been thoroughly vetted by the Maryland State Police, have passed all required background checks (including fingerprinting) and been fully trained by Maryland certified instructors, including passing a scored and graded life-fire test, on first application and for every renewal. There is no conceivable justification for the 7-day waiting period requirement for these individuals. The so-called "cooling off" rationale, noted but rejected in *Ortega*, is particularly senseless for these individuals because they **already possess** regulated firearms and are licensed to carry handguns fully loaded in public.

² The filings in *Wolford* can be found on the Supreme Court's docket, available at <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/24-1046.html>

Again, nothing in this Bill affects background checks. With the exception noted below, federal law requires a NICS background check for all dealer sales and that function is already carried out by the State Police, as a “point of contact” to the NICS system for all handgun sales. That NICS system background check is computerized and is typically completed within 15-30 minutes. State background checks using State databases are also all computerized and typically completed well before 7 days have elapsed. Once these background checks have been completed for a sale, further delay past that point is pointless and arbitrary. Indeed, federal law allow a dealer **to forego completely** the NICS background check otherwise required by 18 U.S.C. 922(t)(1), for a person who presents to the FFL “a permit that (I) allows such other person to possess or acquire a firearm; and (II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and (ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law.” *Id.*, § 922(t)(3)(A)(i),(ii). **The Maryland carry permit fully qualifies under that provision.** Congress has thus recognized that NICS background checks are simply unnecessary for Maryland permit holders. Maryland should do the same.

The pointless further delay imposed by the 7-day waiting period distinguishes Maryland’s mandatory 7-day waiting periods for all applicants from the waiting period at issue in *McRorey v. Garland*, 99 F.4th 831 (5th Cir. 2024), where the Fifth Circuit sustained a special 10-day period for the completion of the federal NCIS check for 18–20-year-olds. That law allows 10 days for a background check for a special subclass of 18–20-year-olds, where “cause exists to further investigate a possibly disqualifying juvenile record,” but does not allow further delay after that background check had been completed and does not apply more broadly. See 18 U.S.C. § 922(t)(1)(C)(iii). The same is true of *MSI v. Moore*, 116 F.4th 211 (4th Cir. 2024), *cert. denied*, 145 S.Ct. 1049 (2025). While the *MSI* court sustained the 30-day period for the State Police to issue an HQL under MD Code, Public Safety, § 5-117.1, nothing in that opinion suggests that the State Police may impose further delays **after** the HQL background check had been completed. Such further delay is imposed by the 7-day waiting period. In fact, the court noted that the State Police often issue the HQL in far less time. See 116 F.4th at 227 (“there were no completed HQL applications pending disposition for longer than 15 days”). Under existing law, every Maryland carry permit holder is entitled to an HQL free of charge without regard to the process otherwise separately imposed by Section 5-117.1. See MD Code, Public Safety, § 5-306(e).

Because all these individuals, including carry permit holders, have been fingerprinted, they are all covered by the FBI’s “Rap Back” system. Under that system, the State Police will receive prompt notification of the arrest of person whose fingerprints have been submitted to the Rap Back system, regardless of where the arrest is made in the United States. Maryland is a full participant in that Rap Back

system. See <https://www.dpscs.state.md.us/publicservs/bgchecks.shtml>.. That “Rap Back” system did not exist in 1972, when Maryland’s permit system was first created with the enactment of 1972 Maryland Laws, ch. 13. The FBI’s NICS background check and the sophisticated, electronic fingerprinting and computerized background check system currently used by the Maryland State Police are all recent innovations. This comprehensive system allows the State Police to deny a permit to any person who has “exhibited a propensity for violence or instability that may reasonably render the person's possession of a handgun a danger to the person or to another” or who is “otherwise prohibited” by law “from purchasing or possessing a handgun.” MD Code, Public Safety, § 5-306(a)(10). The State Police may immediately revoke the permit held by any person who is no longer eligible for a permit under all the criteria otherwise imposed by Section 5-306. MD Code, Public Safety, § 5-310.

Active duty and retired officers are, of course, very law-abiding. The same is overwhelmingly true for permit holders. See John Lott, Carlisle E. Moody, and Rujun Wang, *Concealed Carry Permit Holders Across the United States: 2023*, at 43-44 (2023) (“it is impossible to think of any other group in the US that is anywhere near as law-abiding,” noting further that “concealed carry permit holders are even more law-abiding than police”) (available at <https://bit.ly/3O8SjGH>). That reality is undisputed. “Simply put, CCW permit holders are not the gun wielders legislators should fear.” *May v. Bonta*, 709 F. Supp. 3d 940, 969 (C.D.Cal. 2023), *aff’d in part, rev’d in part on other grounds sub nom., Wolford v. Lopez*, 116 F.4th 959 (9th Cir. 2025), *cert. granted*, No. 24-1046, --- S.Ct. --- (Oct. 03, 2025); *Wolford v. Lopez*, 686 F.Supp.3d 1034, 1075-76 (D.Haw. 2023) (same). The Rand Corporation agrees. See Rosanna Smart, et al., *The Science of Gun Policy: A Critical Synthesis of Research Evidence on the Effect of Gun Policies in the United States* 427 (4th ed. 2024), available at https://www.rand.org/pubs/research_reports/RRA243-9.html (“as a group, license holders are particularly law abiding and rarely are convicted for violent crimes.”).

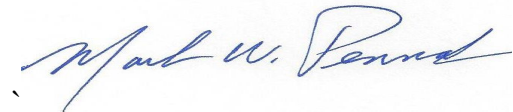
We suggest a technical amendment. Under federal law, the dealer may transfer the firearm within 3 days even if the NICS background check is not completed within that time. See 18 U.S.C. § 922(t)(1)(B)(ii). Maryland’s 7-day waiting period provisions likewise permit a dealer sale or private sale to take place after 7 days regardless of whether the background check is completed. The Bill, as written, can be read as arguably removing that 7-day limitation entirely for active duty and retired law enforcement officers and permit holders. That unintended result would be obviously senseless. Thus, this Bill should be amended to make clear that sales and transfers cannot be delayed beyond that 7-day period. **Again, that is current law.**

More fundamentally, and alternatively, the better approach would be to amend this Bill to make Maryland law consistent with current federal law, Section 922(t)(3)(A)(i),(ii), to allow sales and transfers **to permit holders** without the expensive background investigation otherwise required by Section 5-121. A simple

amendment to Section 5-121, to exempt sales and transfers to permit holders would suffice. Such an amendment would retain the 77R application form under Section 5-117 and Section 5-118 and thus allow the State Police to use that information to register the handgun, **just as it does under current law**. That change would not affect the background investigation separately required by current Maryland law for carry permit **applicants** and permit **renewals** under MD Code, Public Safety, § 5-306(a)(10). That simple change will save the State Police substantial resources and modify the Maryland system to make it more rational and thus more defensible in any future litigation.

For all the foregoing reasons, we urge a favorable report on this Bill, especially if it is amended as outlined above.

Sincerely,

A handwritten signature in blue ink that reads "Mark W. Pennak". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark W. Pennak
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